THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE DR. JUSTICE G. YETHIRAJULU

WRIT APPEAL NO.359 OF 2001

Date: 01.09.2005

Between:

Commandant, CISF Unit, VPT, Visakhapatnam and others.

….. Appellants

and

Mahesh Chandra Sharma

……. Respondent

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE DR. JUSTICE G. YETHIRAJULU

WRIT APPEAL NO.359 OF 2001

JUDGMENT: (per the Hon'ble Sri Justice B. Prakash Rao)

This writ appeal is at the instance of the CISF Unit and the Home Department, who seek to assail the order, dated 30.01.2001, passed by the learned Single Judge, allowing W.P.No.18818 of 1988, where under the order, dated 18.05.2003, terminating the services of the respondent herein was sought to be set aside.

The brief facts, which are necessary for disposal of this appeal, are that the respondent-writ petitioner was working as Security Guard in CISF unit and he joined duty as such on 10.06.1976. While so, the charge levelled against the respondent is that while serving with CISF, MAMC Durgapur, on 27.05.1980, he, along with 100 members of the Force, wrongfully gheraoed the Commandant, CISF Unit, MAMC Durgapur, Assistant Commandant, CISF Unit, BOGL Durgapur in the office chamber of the Commandant, CISF Unit, MAMC, Durgapur in order to wrongfully force the Commandant to withdraw the suspension order of three members of the Force belonging to CISF Unit, MAMC, Durgapur and the said act was a grave misconduct and an act of gross indiscipline on the part of the respondent. Therefore, in exercise of powers vested with the first respondent, under Rule 29(a) of the C.I.S.F. Rules, 1969, the respondent was terminated from service with immediate effect. On appeal and on further revision, before the higher authorities, the order of removal has been confirmed. Hence, the respondent filed the writ petition.

The learned Single Judge, after going into the merits of the matter, allowed the writ petition, *inter alia*, on the ground that the Officer viz. NG Datta Gupa, at whose behest the proceedings were initiated, was not examined and further the

enquiry was not conducted in accordance with the Rules contemplated, to hold that the respondent was the person who committed the said act. Further the learned Single Judge also took into consideration the plea of *alibi* that the respondent was attending on his wife in MAMC hospital, in support whereof the respondent produced the Out-patient receipt. Therefore, the order of removal was set aside with a direction to the appellants to reinstate the respondent into service with 50% of back wages and further he should be entitled to continuity of service and other service benefits.

Sri A. Rajasekhar Reddy, the learned Assistant Solicitor General, strenuously contended that the respondent, who was a member of the paramilitary force, was supposed to maintain discipline and high morale and the acts of this type would derail the whole wing. He further contended that the order of the learned Single Judge in setting aside the order of removal was not justified.

Sri G. Vidya Sagar, the learned counsel appearing on behalf of the respondent, sought to sustain the order under appeal, on the ground that the respondent has been singled down by initiating such an action and there was no proper enquiry to hold that the respondent is the person who was responsible for such an act.

On considering the rival submissions made on behalf of both the parties and also on perusal of the entire material available on record, the question that falls for consideration on the facts and circumstances is whether the action of the appellants in terminating the services of the respondent was justified.

There is no dispute to the fact that the respondent was working as Security Guard and the principal allegation made against him was that he was one amongst the 100 persons, who gheraoed and confined the officers concerned with a view to force them to withdraw the suspension orders issued against some of their employees, which is an act of ‘mis-conduct’ and therefore his services were sought to be terminated. Several pleas were sought to be raised on either side. However, the fact remains, on the basis of the record, that even though the allegation is that about 100 persons have gheroaed the officers, it is only the respondent who was held responsible for such an act. In the detailed counter-affidavit filed on behalf of the respondent, there is no specific averment to the effect that any disciplinary action was taken against all

such of those who form part of the said 100 people in confining the officers for the purpose of withdrawing the suspension order. There is not even a reference to any such action being taken against such employees who assisted the respondent. Another curious aspect is that there is no specific allegation at any stage of the proceedings to the effect that either the petitioner has lead the said group or is the person responsible for such gherao against the officers. Having regard to the fact that no action has been taken against the other colleagues and further as rightly noted by the learned Single Judge that the officer, at whose instance the proceedings have been initiated, has not been examined and in the absence of proper enquiry, We hold that the action on the part of the appellants in terminating the services of the respondent is unjust apart from being *ex facie* arbitrary. Even otherwise, the plea that the respondent did not participate in the gherao, since he was attending on his wife at the hospital was also not seriously disputed.

In the circumstances, we do not find any warranting grounds to interfere with the order under appeal.

Therefore, there are no merits in the writ appeal and is accordingly dismissed.

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(B.PRAKASH RAO.J)

(DR.G.YETHIRAJULU.J)

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Dt.01.09.2005